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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 ALFRED BANKS and SHIRLEY
17 LAWRENCE-BANKS,

18 Plaintiffs,

19 vs.

20 COUNTY OF SAN MATEO AND
21 DOES 1-10, ET AL.,

22 Defendants

23 CASE NO:

24 CLASS ACTION COMPLAINT

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1. 42 U.S.C. §1983
2. VIOLATIONS OF SHERMAN
ANTITRUST ACT (15 U.S.C. §
1, et seq.)
3. VIOLATION OF CALIFORNIA
CONSTITUTION §§13C AND D
4. VIOLATION OF CALIFORNIA
GOVT. CODE §11135
5. VIOLATION OF CALIFORNIA
CIVIL CODE §52.1
6. VIOLATION OF ADDITIONAL
PROVISIONS OF THE
CALIFORNIA CONSTITUTION

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. Thousands of San Mateo County jail inmates and their families, most of whom are not convicted but facing charges, are held hostage to grossly unfair and excessive phone charges, forcing them to pay these charges in order to maintain contact with their loved ones who are incarcerated. These charges are nothing but money making schemes by San Mateo County and its jail to force family members desperately trying to maintain contact with their inmate husbands, parents and children to pay for totally unrelated jail expenses or give up their primary lifeline of communication. San Mateo County runs one of the largest jails in the US, and essentially extorts monies from mostly poor and minority families trying to get by and stay in contact with loved ones. It does so by establishing extortionate and outrageous “commissions” to be paid by this vulnerable population to fund the jails.

2. The Federal Communications Commission (“FCC”) has recently taken decisive action. After many years of deliberation, on October 2, 2015, it reached the decision that it would set standards for ICS rates in order “to rein in the excessive rates and egregious fees on phone calls paid by some of society’s most vulnerable: people trying to stay in touch with loved ones serving time in jail or prison.” FCC Press Release. <https://www.fcc.gov/document/fcc-takes-next-big-steps-reducing-inmate-calling-rates>. The FCC observed that “contact between inmates and their loved ones has been shown to reduce the rate of recidivism,” but “high inmate calling rates have made that contact unaffordable for many families, who often live in poverty.” Reducing the cost of calls “measurably increases the amount of contact between inmates and their loved ones, making an important contribution to the criminal justice reforms sweeping the nation.” As Federal Communications Commissioner Mignon Clyburn has said, this system “is inequitable, it has preyed on our most vulnerable for too long, families are being

1 further torn apart, and the cycle of poverty is being perpetuated.” She further added
 2 that the prison phone industry was “the most egregious case of market failure” she
 3 has seen in her career. This lawsuit seeks to put an end to this unconscionable
 4 practice by San Mateo County.

5 3. On November 5, 2015, the FCC released a “Second Report and Order
 6 and Third Further Notice of Proposed Rulemaking” (FCC-136) which establishes
 7 rate caps on interstate and intrastate calling rates and either eliminates and restricts
 8 the fees inmate telephone providers could charge.

9 4. This action against the County of San Mateo, along with soon to be
 10 filed lawsuits against Santa Clara County, Contra Costa County, Alameda County
 11 and previously filed lawsuits against Los Angeles County, Orange County,
 12 Ventura County, Riverside County and San Bernardino County, specifically
 13 concerns the role of local California counties and jails, which collect
 14 unconscionable “commissions” as payment for granting the exclusive telephone
 15 link through which inmates in their various jails can communicate with the outside
 16 world, including family, friends, bailbondsmen, legal counsel and others (hereafter
 17 collectively “Call Recipients”). That these counties fully understand the injustice
 18 they are inflicting, even while they continue it, is captured by the statement of
 19 former Los Angeles County Supervisor, Zev Zaroslavsky, “Everyone’s making a
 20 lot of money at the expense of inmates’ families. They’re in jail. They’re paying
 21 their debt to society. *That doesn’t give us the right to fleece them.*” (emphasis
 22 added).¹

23 5. The phone systems are commonly referred to as an Inmate Calling
 24 System (“ICS”), which is the term used by the FCC when addressing them.
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27 1 See David Lazarus, *Gouging L.A. County Inmates With High Phone Fees*, The
 28 Los Angeles Times, September 8, 2014.

1 Counties like the County of San Mateo enter into exclusive contracts granting to
2 telecommunications companies, the most common of which are Global Tel*Link
3 Corporation (“GTL”) and Securus Technologies, Inc. (“Securus”) (hereafter
4 collectively the “telecommunications companies”), the exclusive right to establish
5 a phone system through which inmates – both pretrial and convicted – may
6 communicate with Call Recipients, who have to establish a pre-paid account with
7 the telecommunications companies and are charged unreasonable, unjust and
8 exorbitant rates, the lion’s share of which are in turn paid to the San Mateo County
9 as what are euphemistically referred to as “commissions.” Said
10 telecommunications companies are common carriers within the meaning of the
11 Federal Communications Act. Under this scheme, the County of San Mateo and its
12 jails receive a **guaranteed \$795,000 annually**, which comprises the majority of
13 the collected charges.

14 6. Notably, the State of California provides a stark contrast to the
15 practices of the County of San Mateo. California’s practice establishes that there is
16 no meaningful basis to contend that exorbitant phone rates and commissions are
17 necessary to cover the costs of the service. In August 2007, California began to
18 phase out commissions at its state prisons, ultimately eliminating them in 2010.
19 Prior to August 2007, calls from California’s prisons were \$1.50 + \$.15/minute for
20 local calls, \$2.00 + \$.22/minute intrastate and \$3.95 + \$.89/minute interstate.
21 Now, with no commissions, current per minute rates for intrastate and local calls
22 are \$.135 and \$.09, respectively, and the cost of an intrastate 15 minute call is
23 \$2.03. Thus, the same 15-minute intrastate call without the commissions is
24 61.70% less than when the State received commissions (\$3.27 differential in the
25 post commission fee divided by \$5.30 total fee when commissions were used).

26 7. These payments, euphemistically called “commissions,” are an
27 integral part of a scheme by virtue of which the County of San Mateo and the
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1 telecommunications companies conspire and share in charging Call Recipients
2 unjust, unreasonable and exorbitant rates to communicate with inmates, as well as
3 fees that are illegal under California law. The rates charged to inmates and their
4 families, friends and associates are far greater than those paid for ordinary
5 telephone service.

6 8. These unjust, unreasonable, excessive and unlawful fees work a
7 terrible hardship on inmates, and their family, friends and associates who bear the
8 brunt of the charges. Most inmates of San Mateo County jails are relatively poor
9 and lack significant financial resources; they are disproportionately people of
10 color, especially African-American and Latino; many suffer from serious mental
11 illness. Their families, friends and associates similarly are relatively poor, people
12 of color and lack significant financial resources. The charges at issue in this
13 complaint unlawfully put the burden on inmates' families, friends and associates of
14 paying for County services and costs that are rightfully the responsibility of the
15 taxpayers and society at large. These practices limit contact between inmates and
16 their families, friends, associates and other Call Recipients due to their exorbitant
17 costs, resulting in greater isolation for inmates and reduced support, and
18 undermining the objective of returning inmates to the community with greater and
19 stronger ties. Many people are forced to limit their contact with inmates far more
20 than they would wish because of the cost.

21 9. Although the Complaint identifies Defendant County of San Mateo,
22 the Sheriff's Department of San Mateo County is a part of that County and, as the
23 term "County" or "County Defendants" is used in this Complaint, it encompasses
24 the Sheriff's Department of San Mateo County as well as the County at large.

25 10. Plaintiffs seek damages and injunctive relief, including refunds of the
26 unlawful sums they paid described in this Complaint.

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1 11. Defendant San Mateo County's wrongful conduct involves relatively
2 small amounts of damages for each class member. Defendants are carrying out a
3 scheme to deliberately collect unlawful but small sums of money from large
4 numbers of Call Recipient Class Members and Inmate Class Members. Call
5 Recipient Class Members are individuals who accept calls from the incarcerated
6 inmate, and set up an account with the third party phone providers. Inmate Class
7 Members are the incarcerated individuals who use the telephone to contact the Call
8 Recipient Class Members. The Defendants conduct unlawfully burdens Class
9 Members' ability to communicate with loved ones, friends, associates or persons
10 important to their or their loved ones' legal situation. Each class brings this action
11 on their own behalf and on behalf of all others similarly situated.

12 12. The gravamen of this Complaint concerns the County of San Mateo's
13 liability for 1) violation of 42 U.S.C. §1983 (for depriving inmates and their
14 families and associates their First Amendment rights of association, and
15 unconstitutionally conditioning their use of the phones on such outrageous charges
16 in violation of the Fifth Amendment's due process and unlawful takings
17 provisions, 2) a violation of the Sherman Antitrust Act, 15 U.S.C. §1, et seq. and 3)
18 various supplemental state law claims, in particular a) that the "commissions",
19 though denominated as such, are an unlawful tax imposed in violation of Article 13
20 C of the California Constitution; b) that the commissions have an unlawful
21 disparate impact on African-Americans and Latinos in violation of Govt. Code
22 §11135, and c) that the commissions constitute a violation of California Civil Code
23 §52.1 by depriving the Plaintiffs of their rights through intimidation, threat or
24 coercion.

25 13. Plaintiffs anticipate that the Complaint will be amended to add
26 additional Named Plaintiff Class Representatives for the County of San Mateo.
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1 **II. JURISDICTION AND VENUE**

2 14. Plaintiffs present federal claims for relief under 42 U.S.C. §1983 and
 3 15 U.S.C. § 1, et seq. Accordingly, federal jurisdiction is conferred upon this Court
 4 by 28 U.S.C. §§1331 and 1343. Plaintiffs' state law claims are so related to their
 5 federal law claims that they form part of the same case or controversy.
 6 Accordingly, supplemental jurisdiction over the state law claims is conferred upon
 7 this Court by 28 U.S.C. §1367.

8 15. Plaintiffs' claims arise out of acts of the Defendants in San Mateo
 9 County, located within the Northern District of California. Accordingly, venue is
 10 proper within the Northern District of California.

11 16. All Plaintiffs – whether inmates for whom a third party ICS account
 12 was in the past or present established, or will in the future be established, and Call
 13 Recipients who establish the ICS account (defined more fully in ¶1, *supra*) – have
 14 standing because both inmates and Call Recipients suffered an injury in fact.
 15 Inmates, even if they did not pay or contribute to payment for the ICS, were and
 16 will be injured because the unlawful conduct alleged herein restricted their
 17 practical ability to communicate with the outside world. Call Recipients were
 18 injured both because the unlawful conduct alleged herein restricted their practical
 19 ability to communicate with inmates and because they paid for unlawful fees and
 20 charges.

21 **III. PARTIES**

22 **A. PLAINTIFFS**

23 17. Plaintiff Alfred Banks is a male inmate at the Maguire Correctional
 24 Facility in Redwood City, California, starting in 2016 and continuing to this date.

25 18. Plaintiff Shirley Lawrence Banks is Alfred Banks's wife, and directly
 26 bears the cost of the charges for telephone calls made by her husband. Therefore,
 27 Plaintiff Shirley Lawrence Banks qualifies as the payor of said fees. Mrs. Banks is
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1 a resident of San Mateo County. On or about December 16, 2015, Counsel for
2 Plaintiffs submitted a Cal. Govt. Code class § 910 claim to San Mateo County on
3 behalf of Thomas Shireman, Alyssa Crombie, and a class of similarly situated
4 persons who have been and will be affected by the imposition of illegal and
5 unconstitutional telephone related charges as alleged herein. On February 10,
6 2016, the County sent notice that the claim was rejected by the Board of
7 Supervisors on February 9, 2016. Plaintiffs Alfred Banks and Shirley Lawrence
8 are members of that class of similarly situated individuals.

9 19. Defendant San Mateo County (hereafter "County") is a public entity
10 organized and existing under the laws of the State of California. The San Mateo
11 County Sheriff's Department (hereafter "SMCSD") is a public entity within the
12 meaning of California law, and is an agency of San Mateo County (Defendants San
13 Mateo County and the San Mateo County Sheriff's Department are hereinafter
14 collectively referred to as "County Defendants"). The County is sued in its own
15 right for a County and/or SMCSD policy, practice or custom which caused
16 Plaintiffs' injuries in violation of one or more federal rights, and is sued as well
17 under California state law for violation of California constitutional guarantees, as
18 well as violations of Civil Code §52.1 and Govt. Code §11135.

19 20. Plaintiffs are ignorant of the true names and capacities of Defendants
20 sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants
21 by such fictitious names. Plaintiffs will give notice of this complaint, and of one of
22 more DOES' true names and capacities, when ascertained. Plaintiffs are informed
23 and believe, and based thereon allege that Defendants DOES 1 through 10 are
24 responsible in some manner for the damages and injuries hereinafter complained
25 of. Because there are numerous Defendants, each of which may have Doe
26 Defendants that should appropriately be named in the Complaint, ten Doe
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1 Defendants may be inadequate. Plaintiffs reserve the right to seek leave to add Doe
2 Defendants.

3 21. Individual Defendants from San Mateo County (although not
4 currently named, but who may be named in the future) may at times be referred to
5 herein collectively as the “Individual Defendants.” .

6 22. Upon information and belief, Plaintiffs further allege that, at all times
7 relevant herein, the Individual Defendants participated in, implemented,
8 supervised, approved, and/or ratified the unconstitutional or illegal acts undertaken
9 on behalf of the County Defendant with regard to which they are named as
10 Individual Defendants.

11 23. Plaintiffs are informed and believe, and thereupon allege that, at all
12 times relevant herein, the Individual Defendants, and each of them, were the
13 agents, servants and employees of the County Defendant with regard to which they
14 are named as Individual Defendants, and were acting at all times within the scope
15 of their agency and employment with the knowledge and consent of their
16 principals and employers. At all times herein, Defendants, and each of them, were
17 acting under the color of state law.

18 24. When a County Defendant is named on state law claims, it is named
19 not only under a theory of directly liability, but also as an entity responsible in
20 respondeat superior for the actions undertaken by its agents, servants and
21 employees. Said respondeat superior liability extends to and encompasses, but is
22 not limited to, the ministerial acts of implementing the contracts and ICS charges
23 challenged in this Complaint.

24 25. When the phrase “San Mateo County Defendants” is used in this
25 Complaint, it refers not only to the County Defendants, but to the Doe Defendants
26 and to any Individual Defendants who may be named with regard to that County.
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IV. CLAIMS OF CLASS REPRESENTATIVES

2 26. Alfred Banks is African-American. He is currently, and for the
3 foreseeable future will be, incarcerated in the Maguire Correctional Facility. He
4 attempts to stay in close contact with his wife Shirley Lawrence Banks and calls
5 her at least twice a day. However, due to the cost of each call he makes from jail,
6 his wife pays a high price to stay in touch with her husband. Mr. Banks is a
7 member of a class of similarly situated individuals that submitted a claim for
8 damages pursuant to California Government Code §910 *et seq.* by certified mail on
9 December 16, 2015. Mr. Banks is a Named Plaintiff in all claims asserted in this
10 complaint *except* that he is not a Named Plaintiff in the federal claims brought
11 under the FCA and 42 U.S.C. §1983 (whether for damages or injunctive relief).
12 Plaintiff Banks brings this suit on his own behalf and on behalf of a class of
13 similarly situated persons, defined elsewhere in this Complaint.

14 27. Shirley Lawrence Banks, Mr. Banks's wife, is also African-American.
15 Due to the cost of each call, whether through GTL, Securus, or another
16 telecommunications company, she is constantly depositing more and more money
17 into her husband's prepaid phone account. Mrs. Banks pays between \$300 and
18 \$350 per month in phone charges. Mrs. Banks was retired up until recently when
19 she began working as a part time cashier at Wal-mart in order to continue to
20 communicate with her husband and pay for the phone calls. The cost of these
21 calls has placed a significant burden upon her. Since Mr. Banks's imprisonment,
22 Mrs. Banks has paid many hundreds of dollars to Securus. Mrs. Banks is a
23 member of a class of similarly situated individuals that submitted a class claim for
24 damages pursuant to California Government Code §910 *et seq.* by certified mail on
25 December 16, 2015. Plaintiff Shirley Lawrence Banks brings this suit on her own
26 behalf and on behalf of a class of similarly situated persons, defined elsewhere in
27 this Complaint.

1 **V. CLASS ACTION FACTUAL ALLEGATIONS**

2 28. The County of San Mateo entered into *exclusive* contracts with Global
 3 Tel*Link (hereinafter referred to as “GTL”) for a period of several years from on
 4 or about November 2007 through on or about March 2013 and Securus
 5 Technologies, Inc., (hereinafter “Securus”) from on or about April 2013 to the
 6 present, to provide pay telephone services from San Mateo County’s jails and other
 7 correctional facilities, resulting in a monopoly for GTL and Securus who received
 8 the contract. Because these contracts were/are exclusive to GTL and Securus and
 9 because inmates are literally a captive market with no ability to choose another
 10 telephone company, there are no competitive market forces to constrain the prices
 11 set by GTL and Securus.²

12 29. In return for this monopoly power, however, GTL and Securus
 13 provide kickbacks, masqueraded as “site commissions,” to the County of San
 14 Mateo. Indeed, the County of San Mateo selected GTL and Securus to be the third
 15 party phone providers based on the fact that they were the companies that agreed to
 16 pay the highest amount in annual commissions. In order to generate these sizable
 17 kickbacks, “[f]amilies of incarcerated individuals often pay significantly more to
 18 receive a single 15-minute call from prison than for the basic monthly phone
 19 service.”³ In addition, GTL and Securus impose unnecessary and unconscionable
 20 fees and charges on accounts used for inmate telephone calls, all of which “inflicts
 21 substantial and clear harm on the general public,”⁴ including Plaintiffs.

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 24 ² See *In re Rates for Interstate Inmate Calling Servs.* I, 28 FCC Rcd. 14107, 14129
 25 (F.C.C. Sept. 26, 2013).

26 ³ *Id.*, 28 FCC Rcd. at 14130.

27 ⁴ *In re Rates for Interstate Calling Servs.* II, 40, 15929, 15938 (F.C.C. Nov. 21,
 28 2013).

1 30. Since County Defendant's commission contract provides a substantial
2 minimum guaranteed fee against an identified percentage of the ICS charges for
3 the County of San Mateo after which Securus still make a substantial profit, it is
4 obvious that, without the commissions, the charges would be substantially lower,
5 and they bear no reasonable relationship to the actual cost of providing the ICS
6 service.

7 31. County Defendants use its annual commissions as provided by Penal
8 Code §4025(c-d), which states that any money or commission collected by a jail
9 for the use of pay phones primarily used by incarcerated inmates shall be deposited
10 in the Inmate Welfare Fund and used first for the benefit, education and welfare of
11 inmates and, to the extent not needed for that purpose, may be used for the
12 maintenance of county jail facilities. Nonetheless, rather than using the money
13 primarily for vocational and educational programs, or other programs designed for
14 the rehabilitation of inmates, much, if not most, of the money deposited in the
15 Inmate Welfare fund is spent on general jails issues, including maintenance,
16 equipment, office furniture, salaries and, in some instances, food. The
17 demographics of the jail population of County Defendants' jails are highly
18 disproportionate to the demographics of San Mateo County as a whole. While
19 Plaintiffs do not currently have statistical breakdown of San Mateo County, there
20 are readily available statistics available on the demographics of the California
21 prison population which, on information and belief, mirrors that of the County
22 jails. While approximately 29% of the California male prison population is
23 African-American, less than 7% of the California population is African American.
24 In 2013, 4.367 % of all African-American males (4,367 out of every 100,000) in
25 California were imprisoned, compared to .922 % (922 out of every hundred
26 thousand) for Latinos, and .488% (488 out of every hundred thousand) for whites.
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1 Said another way, African-Americans are imprisoned at almost 10 times the rate of
2 whites, and Latinos are imprisoned at almost twice the rate of whites.

3 32. The jail population is similarly disproportionately composed of
4 persons with mental illnesses or drug addiction, both of which qualify as
5 disabilities. A 2006 study by the U.S. Department of Justice found that more than
6 half of all prison and jail inmates have a mental health problem compared with 11
7 percent of the general population, yet only one in three prison inmates and one in
8 six jail inmates receive any form of mental health treatment. Other data indicate
9 that approximately 20% of incarcerated inmates have a serious mental illness, and
10 30 to 60 % have substance abuse problems. The percentages increase significantly
11 when including broad-based mental illnesses. For example, 50 percent of males
12 and 75 percent of female inmates in state prisons, and 75 percent of females and 63
13 percent of male inmates in jails, will experience a mental health problem requiring
14 mental health services in any given year.

15 **A. FACTUAL ALLEGATIONS**

16 33. For a period of several years and continuing through on or about
17 March 31, 2013, the County had a written agreement with GTL to provide ICS for
18 the SMCSD. Pursuant to that agreement, GTL agreed to pay, and did pay, the
19 County a Minimum Annual Guaranty of \$620,000, adjusted each year based on the
20 number of inmates housed in the County's jails. Plaintiffs are currently unaware of
21 the actual commission amounts that GTL has paid to this County for each year this
22 agreement was in effect.

23 34. Effective on or about April 1, 2013, the County began its current
24 agreement for ICS with Securus. The original terms of the current written
25 agreement was for a term of three years, under which the County receives a
26 Minimum Annual Guaranty of \$820,000 for the first year, and \$795,000 for each
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1 year thereafter. Upon information and belief, this contract was renewed on the
2 same terms until at least 2017.

3 35. In addition, upon information and belief, the County also has an
4 agreement with GTL, Securus and/or another third party provider, the details of
5 which are currently unknown to Plaintiffs, but which generally involve the sale of
6 prepaid direct call phone cards directly to inmates. As with the GTL and Securus
7 arrangements, the calling cards have unreasonable, unjust and grossly excessive
8 rates, with a connection fee and a rate per minute far exceeding the standard rate
9 for local calls, or those of the San Mateo County region.

10 36. At no time did the County's residents vote to approve the foregoing
11 commissions paid by GTL or Securus to the County or the rates charged to the
12 inmates and/or Call Recipients pursuant to the County's agreements with GTL or
13 Securus.

14 **VI. CLASS DEFINITIONS**

15 37. The Named Plaintiffs bring this action on their own behalf, and on
16 behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal
17 Rules of Civil Procedure.

18 38. Because there is a race/ethnicity disparate impact claim in the case,
19 and because Plaintiffs' contention that persons not part of the protected disparate
20 impact categories (i.e., African-American and Latino) are appropriate class
21 members for a disparate impact claim may be disputed, Plaintiffs have defined a
22 sub-class for the disparate impact claims composed of African-Americans and
23 Latinos only. This sub-class would only apply in the event the Court were
24 ultimately to conclude that a) persons who are not African-American or Latino
25 (e.g., white inmates and their families) do not have standing to assert a disparate
26 impact claim, or are not members of a disparate impact class, even though they
27 suffered the same injuries as African-Americans and Latinos, and b) the disparate
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1 impact classes must accordingly be limited to African-Americans and Latinos. This
2 alternative sub-class applies only to the disparate impact claims and is referred to
3 as the Limited Disparate Impact Sub-Class.

4 39. The Named Plaintiffs for the General Class of San Mateo County are
5 as follows:

6 a. Alfred Banks (current inmate); and
7 b. Shirley Lawrence Banks (Alfred Banks's wife, who has established
8 and paid for a pre-paid ICS account to allow her to communicate with
9 her husband).

10 40. The Proposed Named Plaintiffs for the Limited Disparate Impact Sub-
11 Class of San Mateo County are as follows:

12 a. Alfred Banks (current African-American inmate);
13 b. Shirley Lawrence Banks (African-American wife of Alfred Banks,
14 who has established and paid for a pre-paid ICS account).

15 41. At times in this Complaint the General Class Named Plaintiffs may be
16 referred to collectively by that title. Similarly, at times in this Complaint, the
17 Limited Disparate Impact Sub-Class Named Plaintiffs may be referred to
18 collectively by that title.

19 42. Additionally, at times in this complaint, the General Class and
20 Limited Disparate Impact Sub-Class Named Plaintiffs who were or are inmates are
21 referred to collectively as the "Named Inmate Plaintiffs", and the General Class
22 and Limited Disparate Impact Sub-Class Named Plaintiffs who were Call
23 Recipients are referred to collectively as the "Named Call Recipient Plaintiffs."

24 43. Also, the General and Limited Disparate Impact Sub-Class Members
25 who qualify as Call Recipients at times may be referred to collectively as "Call
26 Recipient Class Members," and the General and Limited Disparate Impact Sub-

1 Class Members who qualify as inmates at times may be referred to collectively as
2 "Inmate Class Members."

3 **A. GENERAL CLASS DEFINED**

4 44. The General Rule 23(b)(2) Class (referring to the class of people
5 seeking purely injunctive relief) of San Mateo County is generally defined as
6 follows:

7 Those individuals or entities that qualify as either a) a past, present or
8 future San Mateo County Jail inmate for whom a third party ICS account
9 was in the past or present, or in the future will be, established, or b) a Call
10 Recipient, i.e., inmates' family, friends, bailbondsmen, legal counsel, or
11 others, who in the past or present has established, or will in the future
12 establish, a pre-paid ICS account with a telecommunications company
13 (currently Securus) that has contracted with the San Mateo County to
14 provide third party phone accounts for phone access to County Jail inmates,
15 from which pre-paid accounts the phone charges and administrative or other
16 fees for calls with inmates housed or confined in any San Mateo County Jail
17 Facility are paid, and out of which collected funds the County of San Mateo
18 is paid commissions pursuant to its contract with the telecommunications
19 company.

20 45. The General Rule 23(b)(3) Class (referring to the class of people
21 seeking monetary relief in addition to injunctive relief) of San Mateo County is
22 generally the same, but limited to those who suffered monetary harm and so
23 excludes certain future class members, and is defined as follows:

24 Those individuals or entities, through the earlier of the complete
25 cessation of the challenged conduct or the final resolution of this case, that
26 qualify as either a) a past or present San Mateo County Jail inmate for whom
27 a third party ICS account was established, or b) a Call Recipient, i.e.,

1 inmates' family, friends, bailbondsmen, legal counsel, or others, who in the
2 past or present has established, or will in the future establish, a pre-paid ICS
3 account with a telecommunications company (currently Securus) that has
4 contracted with the County of San Mateo to provide third party phone
5 accounts for phone access to County Jail inmates, from which pre-paid
6 accounts the phone charges and administrative or other fees for calls with
7 inmates housed or confined in any County of San Mateo Jail Facility are
8 paid, and out of which collected funds the County of San Mateo is paid
9 commissions pursuant to its contract with the telecommunications company.

10 **B. LIMITED DISPARATE IMPACT SUB-CLASS DEFINED**

11 46. The Limited Disparate Impact Rule 23(b)(2) Sub-Class (referring to
12 the class of people seeking purely injunctive relief) of San Mateo County applies
13 only in the event the Court determines that a disparate impact class is limited to
14 African-Americans and Latinos. This sub-class is generally defined as follows:

15 Individuals that qualify as either a) a past, present or future County of
16 San Mateo Jail African-American or Latino inmate for whom a third party
17 ICS account was in the past or present, or in the future will be, established,
18 or b) a Call Recipient, i.e., an African-American or Latino inmates' family,
19 friends, bailbondsmen, legal counsel, or others, who is either African-
20 American or Latino, and who in the past or present has established, or will in
21 the future establish, a pre-paid ICS account with a telecommunications
22 company (currently Securus) that has contracted with the County of San
23 Mateo to provide third party phone accounts for phone access to County of
24 San Mateo Jail inmates, from which pre-paid accounts the phone charges
25 and administrative or other fees for calls with inmates housed or confined in
26 any County of San Mateo Jail Facility are paid, and out of which collected

funds the County of San Mateo is paid commissions pursuant to its contract with the telecommunications company.

47. The Limited Disparate Impact Rule 23(b)(3) Class (referring to the class of people seeking monetary relief in addition to injunctive relief) of San Mateo County is generally the same, but limited to those who suffered monetary harm and so excludes certain future class members, and is defined as follows:

Individuals, through the earlier of the complete cessation of the challenged conduct or the final resolution of this case, that qualify as either a) a past or present County of San Mateo Jail African-American or Latino inmate for whom a third party ICS account was in the past or present, or in the future will be, established, or b) a Call Recipient, i.e., an African-American or Latino inmates' family, friends, bailbondsmen, legal counsel, or others, who is either African-American or Latino, and who in the past or present has established, or will in the future establish, a pre-paid ICS account with a telecommunications company (currently Securus) that has contracted with the County of San Mateo to provide third party phone accounts for phone access to County of San Mateo Jail inmates, from which pre-paid accounts the phone charges and administrative or other fees for calls with inmates housed or confined in any County of San Mateo Jail Facility are paid, and out of which collected funds the County of San Mateo is paid commissions pursuant to its contract with the telecommunications company.

VII. COMPLIANCE WITH RULE 23 REQUIREMENTS DEFINITIONS

A. NUMEROSITY

48. Because California is such a large state, many of its jail systems are large compared to the average jail system in the United States.

1 49. The San Mateo County Jail has a jail population numbering around
 2 1,000 inmates.

3 50. Average jail turnover rate in US jails is 15 times per year.
 4 <http://apps.fcc.gov/ecfs/document/view;NEWECFSSESSION=KnsqVy1h8yKTrl2gyF3g621nyZNJN2nJpXX6DFxznyXyXnh8LJhT!1736751079!-973180750?id=60001115155>.

7 51. While the turnover rate is smaller in large jails, the jail population
 8 turns over several times per year.

9 52. Even assuming that only a small fraction of inmates and their families
 10 avail themselves of prepaid ICS accounts, on information and belief, each class for
 11 San Mateo County numbers in the thousands.

12 **B. COMMON ISSUES OF FACT OR LAW**

13 53. The County of San Mateo has a contract with a telecommunications
 14 company, the terms of which provide a minimum annual guaranteed payment
 15 against a percentage that goes to the County Jail for the exclusive right to provide
 16 pre-paid Call Recipient phone accounts to receive inmate calls.

17 54. The common issues of fact or law applicable to each class include:

- 18 a. Are the charges pursuant to which Defendant County of San
 Mateo receives Contract Funds so excessive, arbitrary and/or
 unreasonable as to deprive or limit Class Members' ability to
 reasonably communicate between Inmate Class Members and
 their families and loved ones who are Call Recipient Class
 Members in violation of the First Amendment and/or Due
 Process clauses of the United States and/or California
 Constitutions?
- 26 b. Are the charges pursuant to which Defendant County of San
 Mateo receives Contract Funds so excessive, arbitrary and/or

1 unreasonable as to deprive or limit Class Members' of due
2 process by virtue of their disproportionate relationship to the
3 reasonable cost to Defendant County of San Mateo of ICS
4 usage?

5 c. Are the charges pursuant to which the Defendant County San
6 Mateo receives Contract Funds so excessive, arbitrary and/or
7 unreasonable as to place unconstitutional conditions on Class
8 Members' exercise of their Fifth Amendment (and parallel state
9 Constitutional) rights and/or constitute an unlawful taking in
10 violation of Federal and California due process and unlawful
11 takings clauses?

12 d. Do the Contract Funds qualify as an unlawful tax under Articles
13 13 C and/or D of the California Constitution?

14 e. Do the ICS charges that provide the source of the Contract
15 Funds received by Defendant County of San Mateo, and
16 consequently the Contract Funds, have a disparate impact on
17 African-Americans and Latinos, and, if so, a) are the Contract
18 Funds necessary to the operation of the County Jails or
19 otherwise substantially justified, and b) if they are, can they be
20 replaced by an equally effective but less discriminatory
21 alternative?

22 f. If the ICS charges that provide the source of the Contract Funds
23 received by Defendant County of San Mateo, and consequently
24 the Contract Funds, have a disparate impact on African-
25 Americans and Latinos, do persons who are injured by such
26 charges who are not African-American or Latino have standing
27 to receive redress for such unlawful charges?

1 g. Do the ICS Contracts create, or contribute to the creation of, a
2 coercive choice for Class Members between paying unlawful
3 ICS charges (on any of the foregoing grounds) or foregoing
4 spoken communicational between inmates and family, friends
5 or other associates and thereby violate Civil Code §52.1?
6 h. Are presumed damages available to Plaintiffs and the Class
7 Members for their non-economic damages for violation of the
8 federal rights asserted in the complaint?

9 55. While there are additional common issues, these issues alone more
10 than establish that there are common issues.

11 **C. TYPICALITY**

12 56. In accordance with F.R. Civ. P. Rule 23(a), the claims of the Named
13 Plaintiffs are typical of each class for which they are named as a class
14 representative. All Named Inmate Plaintiffs were in the custody of San Mateo
15 County Jail when they were subjected to the unlawful conduct alleged in the
16 Complaint, which unlawful conduct applied and applies to all inmates in San
17 Mateo County Jail, who established, or whose family or other associates
18 established, an ICS pre-paid account through Call Recipients. All Named Call
19 Recipient Plaintiffs established a pre-paid ICS account with San Mateo County Jail
20 in order to be able to communicate with an inmate housed in San Mateo County
21 Jail, and were accordingly subjected to the unlawful conduct alleged in the
22 Complaint, which unlawful conduct applied and applies to all Call Recipients who
23 established an ICS pre-paid account through Call Recipients.

24 57. Thus, the Named Plaintiffs for the General Class of San Mateo
25 County and Limited Disparate Impact Classes have the same interests, and have
26 suffered the same type of damages as the Class Members of those classes. Named
27 Plaintiffs' claims for the respective classes alleged in this Complaint are based
28

1 upon the same or similar legal theories as the claims of the Class Members. Each
2 class member of the respective classes alleged herein suffered actual damages as a
3 result of the actions of each Defendant applicable to that class. The actual damages
4 suffered by Plaintiffs are similar in type and amount to the actual damages suffered
5 by each class member.

6 58. The economic losses suffered by each class member (whether General
7 or Limited Disparate Impact Sub-Class) are commonly determined by the amount
8 paid by that class member for the ICS charges paid by or on behalf of that class
9 member, plus interest to be determined.

D. ADEQUACY OF REPRESENTATION

11 59. In accordance with F.R. Civ. P. Rule 23(a), the Named Plaintiffs will
12 fairly and adequately protect the interests of the class. The interests of the Named
13 Plaintiffs are consistent with and not antagonistic to the interests of each class.

14 60. Similarly, class counsel are experienced class action litigators who
15 will fairly and adequately protect the interests of each class.

E. PREDOMINANCE AND SUPERIORITY

17 61. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(A), prosecutions of
18 separate actions by individual members of the class would create a risk that
19 inconsistent or varying adjudications with respect to individual members of the
20 class would establish incompatible standards of conduct for the parties opposing
21 the class.

22 62. In accordance with Fed.R.Civ.P. Rule 23(b)(1)(B), prosecutions of
23 separate actions by individual members of the class would create a risk of
24 adjudications with respect to individual members of the class that would, as a
25 practical matter, substantially impair or impede the interests of the other members
26 of the class to protect their interests.

1 63. In accordance with Fed.R.Civ.P. Rule 23(b)(2), Plaintiffs are
2 informed and believe, and thereon allege that Defendants have acted on grounds
3 generally applicable to the class.

4 64. In accordance with Fed.R.Civ.P. Rule 23(b)(3), the questions of law
5 or fact common to the members of the class predominate over any questions
6 affecting only individual members, and this class action is superior to other
7 available methods for the fair and efficient adjudication of the controversy between
8 the parties. The interests of Class Members in individually controlling the
9 prosecution of a separate action is low in that most Class Members would be
10 unable to individually prosecute any action at all. The amounts at stake for
11 individuals are such that separate suits would be impracticable in that most
12 members of the class will not be able to find counsel to represent them on an
13 individual basis. It is desirable to concentrate all litigation in one forum because all
14 of the claims arise out of the same basic pattern of conduct, the legality of which is
15 subject to class wide determination. It will promote judicial efficiency to resolve
16 the common questions of law and fact in one forum rather than in multiple courts.
17 Because the unlawful conduct alleged herein is systemic, it is particularly well
18 suited to resolution on a class basis, as the critical questions in the case may be
19 answered on a class wide basis. Indeed, in this case, there are no individualized
20 issues at all regarding liability. Either the charges are lawful under the legal
21 theories implicated by this Complaint or they are not.

22 65. The claims raised herein are susceptible to common proof. Defendant
23 County of San Mateo has a contract under which it receives a minimum fee against
24 a percentage of certain proceeds in exchange for its grant of exclusive ICS rights.
25 The phone charges and related fees that Class Members pay are uniform across
26 Class Members, and are discoverable from the contracted telecommunications
27 company computerized records. The race and ethnicity of Class Members for the
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1 disparate impact claims are discoverable from jail and phone records, either
2 because they directly contain such information or because they can be determined
3 from statistical analyses based on those records (including from census information
4 based on addresses).

5 66. Plaintiffs know of no difficulty that will be encountered in the
6 management of this litigation that would preclude its maintenance as a class action.
7 The class action is superior to any other available means to resolve the issues
8 raised on behalf of the classes. The class action will be manageable because
9 computerized records systems exist from which to ascertain the members of the
10 class and to ascertain some of the proof relevant to Plaintiffs' claims. Liability can
11 be determined on a class-wide basis based on class wide evidence because the
12 Plaintiffs complain of systemic and widespread policies and practices that are
13 uniform for Defendant County of San Mateo, based on their particular contract
14 with the relevant telecommunications company. Named Plaintiffs and the Class
15 Members are entitled to economic damages under federal and state law, and to
16 such other damages as may be determined by the Court or the trier of facts; to
17 statutory damages under Civil Code § 52.1; and, in any event, individualization or
18 variability in damages is not a bar to a liability certification based on common
19 liability issues.

20 67. In the event that a determination is made that the disparate impact
21 claim is limited only to African-Americans and Latinos (a proposition that
22 Plaintiffs contest), those Class Members who are African-Americans and Latinos
23 can be identified through a combination of available records and self-identification.

24 68. Plaintiffs do not know the identities of the Class Members. The
25 identities of the Class Members are ascertainable from a combination of San Mateo
26 County Jail and the County's contracted telecommunications company records.
27 Plaintiffs are informed and believe, and thereon allege, that the foregoing computer
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1 records reflect the identities, including addresses and telephone numbers, of the
 2 persons who qualify as Class Members, and the charges incurred, and that it is
 3 possible to ascertain from those records who qualifies as a class member of each
 4 class.

5 69. In accordance with Fed.R.Civ.P. Rule 23(b)(3), Class Members must
 6 be furnished with the best notice practicable under the circumstances, including
 7 individual notice to all members who can be identified through reasonable effort.
 8 Plaintiffs are informed and believe that the telecommunications company computer
 9 records and County Jail records for Defendant County of San Mateo contain a
 10 current or last known address for Class Members, as well as the billing information
 11 pertinent to each class member.

12 **VIII. APPROPRIATENESS OF EQUITABLE RELIEF**

13 70. Inmate Plaintiffs and Class Members currently incarcerated, and Call
 14 Recipient Plaintiffs and Class Members with current and operating ICS accounts,
 15 are and will continue to be, subject to the unlawful ICS phone charges addressed
 16 in this Complaint.

17 71. Defendant County of San Mateo's continuing violations of law under
 18 applicable United States and California constitutional and statutory provisions
 19 causes Plaintiffs and Class Members continuing, sweeping and irreparable harm.

20 72. Because no adequate remedy at law exists for the injuries alleged
 21 herein, Plaintiffs seek injunctive relief under both federal and state law, including
 22 restitution in amounts to be determined at trial based on the unlawful payments
 23 plus interest.

24 **IX. DAMAGES**

25 73. As a result of San Mateo County Defendants' unlawful conduct,
 26 Plaintiffs and Class Members have suffered, and will continue to suffer,
 27 compensable damages in amounts to be determined at trial, including economic,

1 physical and emotional distress damages, in amounts according to proof at trial.
2 The economic damages and/or refund/restitution/disgorgement are susceptible to
3 class wide proof based on the computerized records of the applicable
4 telecommunications company, the San Mateo County Jail, and the applicable
5 documents and records memorializing and documenting the ICS charges
6 complained of herein.

7 74. Plaintiffs and the class members are entitled to statutory damages
8 under state law, and to presumed damages under federal law.

9 75. San Mateo County Defendants acted maliciously, fraudulently or
10 oppressively, and in reckless disregard of the Plaintiffs' and Class Members'
11 rights, thereby entitling Plaintiffs and the Class to an award of punitive damages
12 from all Defendant individuals except the County Defendants or any governmental
13 entity.

14 **X. CLAIMS**

15 **A. VIOLATIONS OF 42 U.S.C. §1983 [BY ALL PLAINTIFFS (OTHER
16 THAN ALFRED BANKS) AGAINST SAN MATEO COUNTY DEFENDANTS]**

17 76. Plaintiffs incorporate all previous and subsequent paragraphs of this
18 Complaint into this claim.

19 77. Defendant County of San Mateo is a local government entity
20 susceptible to suit under 42 U.S.C. §1983. All of the conduct alleged herein was
21 done under color of state law, pursuant to a governmental policy, custom or
22 practice. Each of the contracts alleged herein was approved by, and entered into
23 under the authority of, the San Mateo County Board of Supervisors.

24 78. The conduct alleged herein violates and unduly burdens the Class
25 Members' rights of association and meaningful personal communication with
26 family, friends, associates and other Call Recipients in violation of the First
27 Amendment to the United States Constitution.

1 79. The conduct alleged herein violates the Fifth Amendment to the
2 United States Constitution. Both Call Recipients and Inmate Plaintiffs' and Class
3 Members' ability to speak to loved ones, friends, and counsel is unconstitutionally
4 conditioned on ICS payments that unreasonably burden the exercise of Fifth
5 Amendment rights to just compensation, unreasonably forces Plaintiffs and the
6 classes alone to bear public costs that should be borne by the public as a whole,
7 and additionally bear no reasonable nexus or rough proportionality to the required
8 payments and the cost to, or burden or effect on, the County of San Mateo by
9 allowing the provision of such calls. Plaintiffs and Class Members' rights to due
10 process of law were unlawfully abridged, as explained above, and their rights to
11 equal protection of the laws were denied in that the conduct complained of herein
12 was arbitrary and capricious.

13 80. ICS charges are especially vulnerable to the type of coercion that the
14 unconstitutional conditions doctrine prohibits because the government often has
15 broad discretion to control inmates' access to the outside world, and therefore
16 government entities can pressure and coerce Class Members into paying hugely
17 disproportionate and unreasonable phone charges in order to be able to
18 communicate with loved ones and others herein referred to as Call Recipients.

19 81. Even if the San Mateo County Defendants could deny inmate phone
20 calls altogether, that is not what has occurred. Once ICS phone calls are allowed, it
21 cannot condition that benefit by infringing and burdening Fifth Amendment rights
22 by forcing Plaintiffs and Class Members to pay funds that are unreasonable and
23 substantially disproportionate to the cost to, or burden or effect on, San Mateo
24 County Defendants for allowing ICS calls.

25 82. Accordingly, San Mateo County Defendants' actions violate
26 Plaintiffs' and Class Members' Fifth Amendment rights, and/or place
27 unconstitutional conditions on their exercise, thereby violating the Fifth
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1 Amendment's prohibition on unconstitutional conditions and taking private
2 property without just compensation.

3 83. As a direct and proximate result of San Mateo County Defendants'
4 violations, Plaintiffs and the Class Members have been damaged in amounts to be
5 determined at trial.

6 84. As a direct and proximate result of San Mateo County Defendants'
7 violations, Plaintiffs and the Class Members are entitled to injunctive relief,
8 including restitution, in amounts to be determined at trial based on the unlawful
9 payments plus interest.

10 **B. VIOLATION OF SHERMAN ANTITRUST ACT [BY ALL PLAINTIFFS
11 AGAINST SAN MATEO COUNTY DEFENDANTS] – INJUNCTIVE RELIEF
12 ONLY**

13 85. Plaintiffs incorporate all previous and subsequent paragraphs of this
14 Complaint into this claim.

15 86. For purposes of this cause of action, the relevant market is Inmate
16 Phone Services within San Mateo County jails. Because inmates and call
17 recipients, including Plaintiffs, are a captive market in that they have no access to
18 phone services other than those offered by the County Defendants, inmate phone
19 services constitute a distinct market from phone services provided outside jails and
20 prisons. Indeed, there are companies, such as GTL and Securus, which compete
21 against each other solely in the inmate phone service market.

22 87. Rather than using their market power to obtain the most competitive
23 phone prices for its consumers (inmates and call recipients), including Plaintiffs,
24 through a typical bidding process, or by allowing more than one company to
25 provide inmate phone services, the County Defendants did the opposite. They used
26 their market control over the jails to enrich themselves at the expense of the phone
27 services end consumers (inmates and call recipients), entering into an exclusive

1 agreement with the phone company willing to pay the highest kickback to the
2 County.

3 88. By providing GTL and Securus exclusive access to a captive market,
4 the County Defendants allow GTL and Securus to prey on Plaintiffs and the class
5 they seek to represent by charging exorbitant rates, without any competitive
6 pressures. In addition, by awarding the contract to GTL based on GTL agreeing to
7 pay the County at least \$620,000 per year and in 2013 awarding the contract to
8 Securus based on Securus agreeing to pay the County at least \$820,000 for the first
9 year and \$795,000 per year thereafter, County Defendants functionally require
10 GTL and Securus to take advantage of its the exclusive market power granted it by
11 the County Defendants to charge rates far in excess of the rates that would prevail
12 in a competitive market.

13 89. On the other hand, if the County Defendants permitted more than one
14 company to provide phone services within its jails and/or selected an exclusive
15 provider based on which company offered the most competitive pricing for end
16 consumers rather than the highest kickback to the County, consumers like
17 Plaintiffs would receive the benefits of such market competition, including lower
18 prices and increased quality and selection.

19 90. County Defendants' conduct not only thwarted competition for inmate
20 phone services within County Defendants' jails, but totally eliminated competition
21 except competition as to who would provide the County Defendants the greatest
22 benefit in exchange for grant of the exclusive contract.

23 91. The direct, proximate, and foreseeable result and effect of the
24 agreement between County Defendants and GTL, and more recently Securus, was
25 that competition for inmate phone services within County Defendants' jails
26 provided no market choice to the ultimate consumer of inmate phone services.
27
28

1 Consumers of inmate phone services, like Plaintiffs, must pay supra-competitive
2 prices for their phone calls.

3 92. The exclusive provider agreements described herein between the
4 County of San Mateo and GTL and more recently Securus, (hereinafter referred to
5 as the “Agreement”) constitutes an unreasonable, vertical agreement in restraint of
6 trade in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. The
7 anticompetitive effects of the Agreement are not overridden or justified by any
8 procompetitive benefits stemming from the Agreement. The charges paid by
9 consumers to use inmate telephone services are significantly above the actual cost
10 of providing the telephone services. Further, there are no safety concerns that
11 require such monopolistic arrangements, and certainly no requirements that the
12 County receive such substantial kickbacks, or any kickback at all. To the extent
13 that any procompetitive benefits result from the Agreement, they could be
14 achieved by less restrictive means.

15 93. As a direct, proximate, and foreseeable result of the foregoing
16 agreement, Plaintiffs have been injured by being charged supra-competitive prices
17 for use of inmate phone services within the County’s jails.

18 94. County Defendant possesses monopoly power over the relevant
19 market (previously defined). It has the power to both control prices by requiring
20 large commissions and the power to exclude competition by allowing only one
21 inmate phone provider access to the market. It controls 100% of the relevant
22 market. It has used its monopoly power to foreclose competition and gain a
23 competitive advantage in violation of Section 2 of the Sherman Antitrust Act, 15
24 U.S.C. § 2.

25 95. County Defendant and GTL, and more recently Securus, have entered
26 into the previously described contract and agreement with the full knowledge and
27 intent to restrain trade, including trade among the various states; have injured
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1 competition, and caused an antitrust injury resulting from that anti-competitive
2 conduct to the end consumers (inmates and call recipients) who avail themselves of
3 inmate phone services.

4 96. GTL and Securus are not named as a Defendants herein but are
5 unnamed co-conspirators.

6 97. GTL is a nationwide company that engages in commercial activities
7 throughout the United States. GTL describes itself on its website as “the leading
8 provider of integrated corrections technology for facilities across North America.”
9 GTL lists on its website facility specific information for correctional facilities in
10 California, Illinois, Arizona, Pennsylvania and Indiana. Career opportunities
11 applications for anywhere in the United States are handled through its Human
12 Resources offices in Mobile, Alabama. GTL provides a single contact number to
13 its correctional facilities clients throughout the United States, available on its
14 website. GTL integrates its technology on a national basis and consumer inquiries,
15 wherever based, are handled through a single, integrated Service Center. On
16 information and belief, GTL orders equipment used for its service from the stream
17 of interstate commerce, and many of the members of the Call Recipient class are
18 outside the state of California. Similarly, Defendant County and its County jails
19 regularly do business with companies throughout the United States, and regularly
20 orders products, including the products used for the foregoing contracts, from the
21 stream of interstate commerce. Similarly, Securus is also a nationwide company
22 that engages in commercial activities throughout the United States. Securus was
23 founded in 1986 and is headquartered in Dallas, Texas. Securus describes itself on
24 its website as a technology company that provides “leading edge civil and criminal
25 justice technology solutions that improve public safety and modernize the
26 incarceration experience.” Securus lists on its website that it serves approximately
27 3,400 correctional facilities and more than 1.2 million inmates across 48 states,
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1 including California. Securus integrates its technology on a national basis and
2 consumer inquiries, wherever based, are handled through a single, integrated
3 Service Center. On information and belief, Securus orders equipment used for its
4 service from the stream of interstate commerce, and many of the members of the
5 Call Recipient class are outside the state of California. Similarly, Defendant
6 County and its County jails regularly do business with companies throughout the
7 United States, and regularly orders products, including the products used for the
8 foregoing contracts, from the stream of interstate commerce. Thus, the conduct
9 challenged herein has a substantial effect on interstate commerce.

10 98. Although Defendant County of San Mateo is a political subdivision of
11 the State of California, the conduct challenged herein has not been taken pursuant
12 to a clearly articulated and affirmatively expressed state policy, and the State of
13 California did not affirmatively contemplate that Counties and County jails would
14 displace competition and has not delegated to Counties or County jails the
15 authority to act anti-competitively in setting fees or commissions. Enactment of
16 the limitations on local or state government's authority to impose assessments, fees
17 or taxes by virtue of Articles 13 C and D to the California Constitution makes clear
18 that local authorities are not authorized to establish fees of any kind that are not
19 reasonably related to their costs, which necessarily by its terms include
20 anticompetitive fees and charges. See Cause of Action XI(D), *infra*.

21 99. The Named Plaintiffs and the members of each class who do
22 currently, or may in the future, use or avail themselves of the inmate telephone
23 service provided by GTL and Securus, will suffer irreparable harm, and there is no
24 adequate remedy at law, unless the Court grants injunctive relief as is further
25 described in the Prayer for Relief section of this complaint.

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**C. VIOLATION OF CALIFORNIA CONSTITUTION ARTICLES 13C AND 13D
[BY ALL PLAINTIFFS AGAINST SAN MATEO COUNTY DEFENDANTS].**

100. Plaintiffs incorporate all previous and subsequent paragraphs of this Complaint into this claim.

101. The commissions received by the San Mateo County Defendants in exchange for their grant of exclusive rights to establish an inmate call system in their jails, although denominated as a commission, in fact constitute a tax under California law, and, as such, were not approved by the voters of the respective counties in which the tax was established, as required by Articles 13C and 13D of the California Constitution.

102. As evidenced by the fact that the commissions are required by California Penal Code §4025 to be used in the first instance for a jail's inmate welfare fund, the primary purpose of the commissions is to raise revenue for governmental services.

103. The commissions far exceed the reasonable cost to the County of San Mateo or San Mateo County Jail of providing services necessary to the activity for which the fee is charged, here the provision of a calling service for inmate calls.

104. Pursuant to Article 13C §1 of the California Constitution, a tax
“means any levy, charge, or exaction of any kind imposed by a local government”
with certain specified exceptions.

105. The first two relevant exceptions are charges “imposed for a specific benefit conferred or privilege granted” or for “a specific government service or product provided” in each of which situations the charge may “not exceed the reasonable costs to the local government” of “conferring the benefit or granting the privilege” or “providing the service or product.” Because the charges here exceed the reasonable cost of the benefit, privilege, service or product, these exceptions are inapplicable.

1 106. The third relevant exception is charges “imposed for the reasonable
2 regulatory costs to a local government for issuing licenses and permits, performing
3 investigations, inspections, and audits” and other inapplicable activities. Because
4 the charges here do not constitute regulatory activities and, in any event, exceed
5 the reasonable cost for the grant of the activity, this exception is inapplicable.

6 107. The last relevant exception is a “charge imposed for entrance to or use
7 of local government property, or the purchase, rental, or lease of local government
8 property.” Because the commission has never been characterized as, and is not, a
9 charge for the limited use of government property, this exception is inapplicable.
10 The Commission is in fact a fee unrelated to the use of government property, and
11 that bears no rational relationship to the cost or value of whatever limited
12 governmental access is involved in the transaction. The purpose of this exception
13 is to allow government owned property that is leased or bought to do so at a
14 reasonable market value, which is inapplicable here.

15 108. Regardless of whether any of the exceptions under Article 13C §1
16 applies, the commissions nonetheless constitute an unlawful tax. Under Article
17 13C, the local government in all situations bears the burden of proving by a
18 preponderance of the evidence that “a levy, charge, or other exaction is not a tax,
19 that the amount is not more than necessary to cover the reasonable costs of the
20 government activity, and that the manner in which costs are allocated to a payor
21 bear a fair or reasonable relationship to the payor’s burden on, or benefits received
22 from, the governmental activity”. This applies to all governmental levies, charges
23 or exactions. It was added by Proposition 26, enacted in 2010, and applies to all of
24 the enumerated exceptions under Article 13C §1. Thus, even if the commission
25 constitutes a charge for the use of government property, it still must be reasonably
26 related to the benefit conferred or benefit received, and, for the reasons previously
27 stated, it does not.

1 109. Accordingly, none of the exceptions under Article 13C §1 of the
2 California Constitution apply, and in any event the commissions at issue here are a
3 tax for which each Plaintiff class and its members are entitled to a refund,
4 measured from the date of the first filing of a Govt. Code §910 claim applicable to
5 that class until such time as the tax ceases to operate.

6 110. As a direct and proximate result of San Mateo County Defendants'
7 violations, Plaintiffs and the Class Members have been damaged in amounts to be
8 determined at trial.

9 111. As a direct and proximate result of San Mateo County Defendants'
10 violations, Plaintiffs and the Class Members are entitled to injunctive relief,
11 including restitution in amounts to be determined at trial based on the unlawful
12 payments plus interest.

D. VIOLATION OF GOVT. CODE §11135 ET. SEQ. [BY ALL PLAINTIFFS AGAINST SAN MATEO COUNTY DEFENDANTS]

15 112. Plaintiffs incorporate all previous and subsequent paragraphs of this
16 Complaint into this claim.

17 113. Both Inmate Class Members and Call Recipient Class Members are
18 disproportionately African-American and Latino compared to the overall
19 population of San Mateo County. They also disproportionately suffer from mental
20 illness and drug addiction.

114. Regardless of whether Inmate Class Members and Call Recipient
Class Members are disproportionately African-American and Latino, or
disproportionately suffer from mental illness or drug addiction, they are perceived
as such.

25 115. To the extent that Inmate Class Members and Call Recipient Class
26 Members are not African-American and Latino, or do not suffer from mental
27 illness or drug addiction, they are, for purposes of the ICS charges, inextricably

1 associated with such Class Members, and suffer the same injuries as Class
 2 Members.

3 116. Defendant County of San Mateo and its Sheriff's Department and
 4 County Jail within San Mateo County, receive a significant amount of money from
 5 the State of California. In fact, over 70 % of all state spending is for local
 6 government assistance, of which, on information and belief, a substantial share,
 7 amounting to many millions of dollars, go to fund various activities of the County
 8 of San Mateo, including its county jail. For example, the State Controller's Office
 9 Community Corrections 2014-2015 Subaccount allocation for San Mateo County
 10 exceeded \$14 Million. See http://www.sco.ca.gov/Files-ARD-Payments/localcomcorremit_1415_dofletter.pdf "Across the state, county officials
 11 are laying claim to billions in state funding to refurbish old jails and build new
 12 ones." <https://www.themarshallproject.org/2015/07/02/california-s-jail-building-boom>. It is anticipated that the State of California will distribute approximately
 13 \$4.4 Billion to the counties by 2016-2017 for realignment costs.
 14 <http://law.stanford.edu/wp-content/uploads/sites/default/files/child-page/443444/doc/slspublic/SCJC%20Money%20full%20report.pdf>. Thus, the
 15 County of San Mateo qualifies as having received, and continuing to receive, state
 16 funds, both generally and for the jail.

20 117. Further, under realignment, the State of California is paying funds to
 21 local counties, including Defendant County of San Mateo, for housing state
 22 prisoners. See http://www.ppic.org/content/pubs/report/R_812MLR.pdf.

23 118. There is no reasonable necessity or substantial legitimate justification
 24 for the imposition of the ICS charges, and, in any event, they can be replaced by an
 25 equally effective but less discriminatory alternative (e.g., a reasonable fee, or a
 26 general tax or fee not aimed specifically at the disproportionately African-

1 American and Latino population that currently pays the ICS charges out of which
 2 Defendant County of San Mateo receives the lion's share.

3 119. As a direct and proximate result of San Mateo County Defendants'
 4 violations, Plaintiffs and the Classes are entitled to injunctive relief, including
 5 restitution in amounts to be determined at trial based on the unlawful payments
 6 plus interest.

7 **E. VIOLATION OF CALIFORNIA CIVIL CODE §52.1 [BY ALL PLAINTIFFS
 8 AGAINST SAN MATEO COUNTY DEFENDANTS].**

9 120. Plaintiffs incorporate all previous and subsequent paragraphs of this
 10 Complaint into this claim.

11 121. By their conduct, San Mateo County Defendants have interfered by
 12 threats, intimidation, or coercion, or attempted to interfere by threats, intimidation,
 13 or coercion of Plaintiffs' rights as secured by the First and Fourteenth
 14 Amendments to the United States Constitution and of the rights secured by the
 15 Constitution and laws of the state of California, including but not limited to
 16 California Constitution, Articles 13C, 13D and Art. I, sec. 7, and the federal and
 17 state statutory protections guaranteed to individuals based on race, including those
 18 statutes that prohibit policies resulting in a disparate impact against a particular
 19 race.

20 122. San Mateo County Defendants' conduct in entering into contracts that
 21 condition Plaintiffs' and Class Members' First Amendment right to communicate
 22 with loved ones, family, friends and associates who are incarcerated (at least once
 23 the benefit is granted) on payments of funds that bear no reasonable nexus or rough
 24 proportionality to the cost to, or burden or effect on, Defendant County of San
 25 Mateo, or are otherwise unlawful, is a coercive act separate and apart from the
 26 imposition of the unlawful charges themselves. The contracts at issue in this
 27 Complaint authorize, require and force Plaintiffs and Class Members to make the

1 coercive choice of paying the ICS charges challenged in this Complaint or
 2 foregoing their ability to communicate with family, friends and associates.

3 123. ICS charges are especially vulnerable to the type of coercion that the
 4 unconstitutional conditions doctrine prohibits because Defendant County of San
 5 Mateo has the ability to control inmates' access to the outside world, and therefore
 6 can pressure and coerce Class Members into paying hugely disproportionate and
 7 unreasonable phone charges in order to be able to communicate with loved ones,
 8 family, friends and associates.

9 124. There was, and is, no lawful justification for San Mateo County
 10 Defendants to threaten, intimidate or coerce any of the Plaintiffs, or to attempt to
 11 use threats, intimidation, or coercion to interfere with Plaintiffs' rights to speak on
 12 the telephone by conspiring with third party providers, such as GTL and Securus,
 13 to charge illegal, unreasonable, excessive, substantially disproportionate, and
 14 prohibitive rates and fees. San Mateo County Defendants' actions were taken with
 15 malice and oppression to deter and/or prevent Plaintiffs from exercising their
 16 protected constitutional and statutory rights.

17 125. As a direct and proximate consequence of San Mateo County
 18 Defendants' actions, Plaintiffs suffered, and continue to suffer, a loss of their
 19 constitutional rights, pain and suffering, including stress and anxiety, financial
 20 losses, and are entitled to all damages authorized by Civil Code §52.1 and all other
 21 applicable laws. In addition, Plaintiffs are entitled to injunctive relief, including
 22 restitution in amounts to be determined at trial based on the unlawful payments
 23 plus interest and attorneys' fees pursuant to Civ. Cod. §52.1(h).

24 **F. ADDITIONAL VIOLATIONS OF CALIFORNIA CONSTITUTION [BY ALL
 25 PLAINTIFFS AGAINST SAN MATEO COUNTY DEFENDANTS].**

26 126. Plaintiffs incorporate all previous and subsequent paragraphs of this
 27 Complaint into this claim.

1 127. The conduct alleged in this Complaint violate Plaintiffs' and Class
2 Members' rights of free speech and association under Articles 2 and 3 of the
3 California Constitution, their right to due process of law under Article 7 of the
4 California Constitution (including the right not to have unconstitutional conditions
5 imposed in exchange for access to a government benefit), their right to equal
6 protection of the law under Article 7 of the California Constitution and their right
7 to just compensation for a public use under Article 19 of the California
8 Constitution.

9 128. As a direct and proximate result of San Mateo County Defendants'
10 violations, Plaintiffs and the Class Members have been damaged in amounts to be
11 determined at trial, and claim such damages directly under the above
12 Constitutional provisions to the extent permitted by law.

13 129. As a direct and proximate result of San Mateo County Defendants'
14 violations, Plaintiffs and the Class Members are entitled to injunctive relief,
15 including restitution in amounts to be determined at trial based on the unlawful
16 payments plus interest.

17 **XI. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and the Class Members
19 they seek to represent, request monetary and injunctive relief against each
20 defendant as follows:

- 21 1. General and special damages according to proof;
- 22 2. A refund/disgorgement/restitution of the monies paid by Class
23 Members that, in turn, were used to pay the contracted commissions to County
24 Defendants the amounts contracted for in connection with the inmate calling
25 agreements of each with telecommunications companies.
- 26 3. Economic, physical and emotional distress damages (in addition to the
27 damages sought in the preceding paragraph, or to the extent not covered or

awarded pursuant to that paragraph), and physical and emotional distress and other damages according to proof.

4. Temporary, preliminary and permanent injunctive relief prohibiting Defendant County of San Mateo from continuing to engage in the unlawful practices complained of herein as follows:

- a. Prohibiting the Defendants from renewing, or entering into new, ICS contracts under which it receives commissions or fees except exceeds the reasonable cost of providing the service of allowing telephone access cost after determination of such amounts by the court;
- b. Prohibiting the Defendants, while the current challenged contract remains in effect, from using the commissions it receives under the contract for any purpose other than placement in a court supervised fund for any purpose other than ultimately restoring such funds back to the class members who paid charges from which said commissions were taken to the extent of said commissions.

5. Temporary, preliminary and permanent injunctive relief requiring Defendant County of San Mateo to provide refunds/disgorgement/restitution of the monies paid or to be paid by Class Members as a form of equitable relief.

6. Class wide presumed damages for non-economic damages for class members on the federal claims, as well as statutory damages as allowed by law under California Civil Code §§52 and 52.1.

7. Attorneys' fees and costs under 42 U.S.C. §1988, 15 U.S.C. § 26, California Civil Code §§ 52(b)(3), 52.1(h); California Code of Civil Procedure §1021.5, and whatever other statute or law may be applicable.

8. Grant any other relief that this Court may deem fit and proper.

1
2 DATED: August 8, 2016

Respectfully Submitted,

3
4 KAYE, MCLANE, BEDNARSKI & LITT, LLP
5 RAPKIN & ASSOCIATES, LLP

6 By: /s/ Barrett S. Litt
7 Barrett S. Litt
8 Attorneys for Plaintiffs

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs, on behalf of themselves individually and on behalf of the Class,
13 demand a jury trial to the extent available under applicable law.

14 DATED: August 8, 2016

Respectfully Submitted,

15
16 KAYE, MCLANE, BEDNARSKI & LITT LLP
17 RAPKIN & ASSOCIATES, LLP

18
19 By: /s/ Barrett S. Litt
20 Barrett S. Litt
21 Attorneys for Plaintiffs